

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**Cr. No. 13-966 JCH/KK**

**MATTHEW CHANNON, and  
BRANDI CHANNON,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on *Defendants' Joint Motion for Discovery Under Fed. R. Crim. P. 16 and Fed. R. Evid. 803*. [Doc. 260] The Government filed a Response [Doc. 267], and Defendants filed a joint Reply [Doc. 270]. Having considered the pleadings, briefs, and relevant law, the Court concludes that the Motion should be denied.

**BACKGROUND**

On January 28, 2014, Defendants filed a discovery motion requesting more than forty items. [Doc. 57] The Government responded that much of the information was not within its possession, custody, or control. [Doc. 82, pp. 8-9] The Court referred that motion to Magistrate Judge Khalsa, who held a status conference. [Doc. 131] Defendants then filed a *Notice of Withdrawal of Motion To Compel Discovery* [Doc. 140], stating: "The parties met and conferred, and resolved all of the pending issues raised in the motion." Defendants later stated, in a motion for continuance referring to their discovery motion, that the parties "were able to

resolve the remaining discovery issues, or at least obtain information indicating that the matters sought were not within the possession of the prosecution." [Doc. 137, p. 2; *see* Doc. 139, pp. 2-3 (Order granting continuance)]

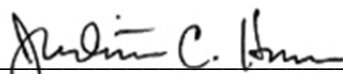
### **DISCUSSION**

On November 25, 2015, Defendants filed the Motion currently before the Court, requesting disclosure of the "OfficeMax original or native databases, or imaging the actual data from OfficeMax," and the "OfficeMax queries used or run to pull the data from the original or native databases." [Doc. 260, p. 1] The Government's Response reaffirms that the material requested is not in its possession, custody, or control, *see* Fed. R. Crim. P. 16, and refers to the testimony of FBI Special Agent Moon that he did not have access to the underlying OfficeMax data. [Doc. 267, p. 6; Doc. 260, p. 6, ¶ 10(C)] Defendants make no contrary showing.

### **CONCLUSION**

On the basis that the material requested by Defendants' Motion is not in the Government's possession, custody, or control, the Court will deny the Motion.

**IT IS THEREFORE ORDERED** that *Defendants' Joint Motion for Discovery Under Fed. R. Crim. P. 16 and Fed. R. Evid. 803* [Doc. 260] is **DENIED**.

  
UNITED STATES DISTRICT JUDGE